

EXHIBIT 81

SECOND MAO DECLARATION PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

PATRICK CALHOUN, *et al.*, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-05146-LHK

**GOOGLE LLC'S NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT ON GOOGLE'S FIRST
AFFIRMATIVE DEFENSE OF CONSENT**

The Honorable Lucy H. Koh

Courtroom 8 – 4th Floor

Date: March 10, 2022

Time: 1:30 p.m.

Amended Complaint Filed: April 16, 2021

Trial Date: None Set

ISSUE PRESENTED

Whether the Court should grant summary judgment on Google's First Affirmative Defense of Consent and dismiss Plaintiffs' remaining claims with prejudice.

RELIEF REQUESTED

Google respectfully requests that the Court grant summary judgement on Google's First Affirmative Defense of Consent and dismiss Plaintiffs' remaining claims with prejudice.

DATED: November 30, 2021

Respectfully submitted,

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personalize ads. *Id.* ¶ 13. Each Plaintiff was shown one or more of these Account Holder Agreements and selected “I AGREE.” *Id.* ¶¶ 27-31, 45-49.

1. Plaintiffs Agreed to Google’s Privacy Policy

Discovery has established that Plaintiffs agreed to Google’s Privacy Policy when they signed up for their Google Accounts. *See* Fair Decl. ¶¶ 34-35 & nn.3-4; Broome Decl. Ex. 5, at Response 1B. The Privacy Policy explains that Google collects the data when users visit websites that use Google Services. It further identifies Chrome browsing history and “activity on third-party sites and apps that use our services” as separate data sources from which Google may receive information. *See* Fair Decl. ¶¶ 51-61. For example, the Privacy Policy in effect when Plaintiffs’ filed suit stated in relevant part:

Our services include: Google apps, sites, and devices, like Search, YouTube, and Google Home[;] Platforms like the Chrome browser and Android operating system[; and] ***Products that are integrated into third-party apps and sites, like ads and embedded Google Maps....***

We collect information about the apps, browsers, and devices you use to access Google services.... The information we collect includes unique identifiers, browser type and setting, device type and settings, operating system.... We also collect information about the interaction of your apps, browsers, and devices with our services, including IP address, crash reports, system activity, and the date, time, and referrer URL of your request.

We collect information about your activity in our services.... ***The activity information we collect may include: Activity on third-party sites and apps that use our services [and] Chrome browsing history you’ve synced with your Google Account.***

We use the information we collect to customize our services for you, including providing recommendations, personalized content, and customized search results.... Depending on your settings, we may also show you personalized ads based on your interests.

Fair Decl. ¶¶ 56-58.

2. Plaintiffs Crespo, Henry, Wilson, and Johnson Affirmatively Consented to the Consent Bump Agreement

Google Account holders as of June 2016—including Plaintiffs Crespo, Henry, Wilson, and Johnson—were shown the Consent Bump Agreement upon logging into their accounts:

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Some new features for your Google Account

We've introduced some optional features for your account, giving you more control over the data Google collects and how it's used, while allowing Google to show you more relevant ads.


What changes if you turn on these new features?

1. More information will be available in your *Google Account*, making it easier for you to review and control



When you use Google services like Search and YouTube, you generate data — things like what you've searched for and videos you've watched. You can find and control that data in *My Account* under the **Web & App Activity** setting.

With this change, this setting may also include browsing data from Chrome and activity from sites and apps that partner with Google, including those that show ads from Google.

 You have Chrome browsing history stored in your *Google Account*. [Learn more](#) about how turning on this setting affects how this data is used for personalization.

2. Google will use this information to make ads across the web more relevant for you



In *My Account*, the **Ads Personalization** setting currently lets Google use data in your account to tailor ads that appear in Google products.

With this change, this setting will also let Google use data in your account to improve the relevance of ads on websites and apps that partner with Google.

These settings apply across all of your signed-in devices and across all Google services. You can change them any time in *My Account*. [Learn more](#) about these features, including how they affect shared devices.

What's still the same?

- Google does not sell your personal information to anyone
- You control the types of information we collect and use at *My Account* (myaccount.google.com)

Choose **I AGREE** to turn these features on or **MORE OPTIONS** for more choices.

[MORE OPTIONS](#)

I AGREE

1 Fair Decl. ¶¶ 18-31 & Ex. 3 at GOOG-CABR-04067836.¹¹

2 The Consent Bump Agreement explained that Google introduced “[s]ome new features for
3 your Google Account,” and provided Account holders the option to turn the features on, adjust them,
4 or leave them off. The Consent Bump Agreement explained: “1. More information will be available
5 in your *Google Account*, making it easier for you to review and control,” and “2. Google will use this
6 information to make ads across the web more relevant for you.” The Consent Bump Agreement further
7 explained:

8 When you use Google services like Search and YouTube, you generate data — things like
9 what you’ve searched for and videos you’ve watched. You can find and control that data in
10 My Account under the Web & App Activity setting.

11 With this change, this setting may also include ***browsing data from Chrome and activity from
sites and apps that partner with Google, including those that show ads from Google.***

12 *Id.* ¶¶ 19-22 & Ex. 3 at GOOG-CABR-04067836 (emphasis added). The Consent Bump Agreement
13 plainly distinguishes between “browsing data from Chrome” (*i.e.*, the Chrome browsing history
14 Google stores in a user’s account when the user enables Sync) and “activity from sites and apps that
15 partner with Google” (*i.e.*, the information Google receives when a user visits websites that use
16 Google Services, at issue here), as separate sources from which Google receives information. *Id.*

17 The Consent Bump Agreement also explained that the data stored in users’ Google Accounts
18 would be used to personalize ads unless that setting was disabled:

19 In My Account, the Ads Personalization setting currently lets Google use data in your account
20 to tailor ads that appear in Google products.

21 With this change, this setting will also let Google use data in your account to improve the
22 relevance of ads on websites and apps that partner with Google.

23 *Id.*

24
25 ¹¹ The sentence next to the Chrome icon—“You have Chrome browsing history stored in your Google
26 Account. Learn more about how turning on this setting affects how this data is used for
27 personalization”—was shown only to users who had Chrome browsing history stored in their accounts
28 already because they had affirmatively enabled Sync at some earlier point. Fair Decl. ¶ 20. Discovery
has confirmed that this sentence was shown to Plaintiffs Henry and Johnson, who had enabled Sync.
Id. ¶¶ 29, 31.